

1
2
3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**
5
6
7
8

9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re:	}	No. 09-06194-PCW11
12 LLS AMERICA, LLC,		
13 Debtor.		
<hr/>		
14 BRUCE P. KRIEGMAN, solely in	}	Adv. No. 11-80297-PCW
15 his capacity as court-appointed		
16 Chapter 11 Trustee for LLS America, LLC,		
17 Plaintiff,	}	MEMORANDUM DECISION RE: DEFENDANT GERARD KRIEF'S MOTION TO DISMISS (ECF NO. 184)
18 vs.		
19 0817726 BC, LTD., et al.,		
20 Defendants.	}	
21		

22 This adversary is one of hundreds commenced by the trustee of the LLS America,
23 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
24 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
25 conducted by the debtor. Defendant Gerard Krief filed a motion to dismiss on April 25,
26 2012, ECF No. 184.

27 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
28 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss

1 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of
2 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
3 raised in the subject motion are the same as those raised in the Previous Decision. Many
4 of the facts in the Previous Decision are relevant to the subject motion.

5 By the supplemental affidavit of Curtis Frye (ECF No. 238), the trustee presented
6 evidence that the defendant loaned or invested an unknown amount and four (4)
7 promissory notes were issued. In 28 distributions occurring from December 2005 to
8 March 2007, the defendant received \$60,954.76 (CAN). By declaration (ECF No. 185),
9 the defendant presented evidence that he resides in Canada, rarely travels to the United
10 States, and each promissory note listed a Canadian entity as borrower with distributions
11 primarily made from Canadian entities. The declarations further states that the loans or
12 investments were solicited in Canada, but no details were provided regarding the manner
13 of the solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of
15 process; (2) improper extraterritorial application of United States bankruptcy law; and
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
18 forth in the Previous Decision and is applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of
20 personal jurisdiction. Unlike the situation in the Previous Decision, this defendant did
21 not file a proof of claim in the underlying bankruptcy case of LLS America. This
22 defendant did, however, seek affirmative relief in this adversary. As concluded in the
23 Previous Decision, by filing a motion to withdraw reference of this adversary to the
24 District Court for Eastern District of Washington, the defendant requested a
25 determination whether this court or the District Court had authority to enter final orders
26 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting
27 a ruling on the merits of a legal issue in this case, the defendant has consented to the
28 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

1 The defendant filing the subject motion had sufficient minimum contacts to
2 establish personal jurisdiction. Many of those facts in the Previous Decision are
3 applicable to the defendant in this case. As stated in the Previous Decision and in the
4 court's oral ruling (ECF No. 715) on the Chapter 11 Trustee's Nunc Pro Tunc Motion
5 for Substantive Consolidation of Debtor and Non-Debtor Estates (ECF No. 449) in the
6 underlying LLS America bankruptcy case No. 09-06194-PCW11, the promissory notes
7 generally provided that any one of the group of LLS companies was responsible for
8 repayment. That group of companies was managed and operated in Spokane,
9 Washington. This adversary complaint alleges that the defendant knew or should have
10 known that he was participating in a Ponzi scheme. Unlike the defendants in the
11 Previous Decision, this defendant did not receive commissions, i.e., compensation for
12 soliciting or locating other investors or lenders. However, the economic activity in which
13 the defendant did engage was sufficient to establish minimum contacts for personal
14 jurisdiction. For these reasons, the motion to dismiss is **DENIED**. Counsel for the
15 defendant shall submit an order consistent with this decision.

16
17 ///END OF MEMORANDUM DECISION///
18
19
20
21
22
23
24
25
26
27
28